

APPEAL NO. 041815  
FILED SEPTEMBER 7, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 28, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and that because the claimant did not sustain a compensable injury, he did not have disability. The claimant appealed, disputing both the injury and disability determinations. The claimant attached both evidence admitted at the CCH and new evidence to his appeal. The respondent (carrier) responded, urging affirmance. There is a further submission from the claimant, replying to the carrier's response.

DECISION

Affirmed as reformed.

The claimant attached documents to his appeal, some of which were not admitted into evidence at the hearing. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. See *generally* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). In determining whether new evidence submitted with an appeal requires remand for further consideration, the Appeals Panel considers whether the evidence came to the knowledge of the party after the hearing, whether it is cumulative of other evidence of record, whether it was not offered at the hearing due to a lack of diligence, and whether it is so material that it would probably result in a different decision. See Texas Workers' Compensation Commission Appeal No. 93536, decided August 12, 1993. Upon our review, we cannot agree that the evidence meets the requirements of newly discovered evidence, in that the claimant did not show that the new evidence submitted for the first time on appeal could not have been obtained prior to the hearing or that its inclusion in the record would probably result in a different decision. The evidence, therefore, does not meet the standard for newly discovered evidence and will not be considered.

The claimant correctly points out in his appeal that Finding of Fact No. 4 references (incorrect date of injury), as the alleged date of injury. Both the Decision and Conclusion of Law No. 3 reference \_\_\_\_\_, as the alleged date of injury. The (incorrect date of injury), date is clearly a typographical error and we reform Finding of Fact No. 4 to conform to the Decision, Conclusion of Law No. 3, and the evidence to read as follows: On \_\_\_\_\_, Claimant was not injured in the course and scope of employment.

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10) and that he had disability as defined by Section 401.011(16). Conflicting evidence was presented at the CCH on the issue of whether

the claimant sustained a compensable injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer noted that the claimant was not credible and gave varying descriptions of how he was injured. Although there is conflicting evidence in this case, we conclude that the hearing officer's determination that the claimant did not sustain a compensable injury is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

We affirm the decision and order of the hearing officer as reformed.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**PRENTICE-HALL CORPORATE SYSTEMS, INC.  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Edward Vilano  
Appeals Judge